

IC 23-17-17

Chapter 17. Amendment of Articles of Incorporation

IC 23-17-17-1

Written approval by specified person

Sec. 1. Articles of incorporation may require an amendment to the articles of incorporation or bylaws to be approved in writing by a specified person other than the board of directors. The requirement may only be amended with the approval in writing of the person.

As added by P.L.179-1991, SEC.1.

IC 23-17-17-2

Termination, redemption, or cancellation of members or class of members of public benefit or mutual benefit corporation

Sec. 2. (a) An amendment to articles of incorporation or bylaws of a public benefit or mutual benefit corporation that would terminate all members or a class of members or redeem or cancel all memberships or a class of memberships must meet the requirements of this article.

(b) Before adopting a resolution proposing an amendment under this section, the board of directors of a mutual benefit corporation must give notice of the general nature of the amendment to the members.

(c) After adopting a resolution proposing an amendment under this section, the notice to members proposing the amendment must include a statement of not more than five hundred (500) words opposing the proposed amendment if the statement is submitted by:

(1) five (5) members; or

(2) members having at least three percent (3%) of the voting power;

whichever is less, not later than twenty (20) days after the board of directors has voted to submit the amendment to the members for approval. In a public benefit corporation, the production and mailing costs shall be paid by the requesting members. In a mutual benefit corporation, the production and mailing costs shall be paid by the corporation.

(d) An amendment under this section must be approved by the members by a majority of the votes cast by each class.

(e) IC 23-17-8-2 does not apply to an amendment under this section meeting the requirements of this article.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.119.

IC 23-17-17-3

Adding or changing required or permitted provision; deleting provision not required

Sec. 3. (a) A corporation may amend the corporation's articles of incorporation to do any of the following:

(1) Add or change a provision that is required or permitted in the articles.

(2) Delete a provision not required in the articles.

(b) Whether a provision is required or permitted in the articles must be determined as of the effective date of the amendment.

As added by P.L.179-1991, SEC.1.

IC 23-17-17-4

Adoption by board of directors without member approval; amendments adopted by incorporators

Sec. 4. (a) Unless articles of incorporation provide otherwise, a corporation's board of directors may adopt at least one (1) amendment to the corporation's articles without member approval to do the following:

(1) To extend the duration of the corporation that was incorporated at a time when limited duration was required by law.

(2) To delete the names and addresses of the initial directors and incorporators.

(3) To delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state.

(4) To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution to the name.

(5) To delete a mailing address if an annual report has been filed with the secretary of state.

(6) To include a statement identifying the corporation as a public benefit, mutual benefit, or religious corporation.

(7) To make any other change expressly permitted by this article to be made by director action.

(b) If a corporation has no members, the corporation's incorporators may, until directors have been chosen and then the corporation's board of directors, adopt amendments to the corporation's articles of incorporation subject to any approval required under section 1 of this chapter. The amendment must be approved by a majority of the directors in office or, if the directors have not yet been chosen, by a majority of the incorporators, at the time the amendment is adopted. The corporation shall provide notice of a meeting at which an amendment is to be voted upon. The notice must do the following:

(1) Be in accordance with IC 23-17-15-3.

(2) State that the purpose of the meeting is to consider a proposed amendment to the articles of incorporation.

(3) Contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.120; P.L.96-1993, SEC.11.

IC 23-17-17-5

Approval by board of directors, members, and person whose approval is required; initiation of amendment by board of directors; approval at membership meeting; notice; approval by written consent or ballot; amendment summary

Sec. 5. (a) Unless this article, articles of incorporation, bylaws, or the board of directors acting under subsection (b) require a greater vote or voting by class, an amendment to a corporation's articles of incorporation to be adopted must be approved as follows:

- (1) By the board of directors.
- (2) Except as provided in section 4(a) of this chapter, by the members by a majority of the votes cast.
- (3) In writing by a person whose approval is required by a provision of the articles of incorporation authorized under section 1 of this chapter.

(b) Unless articles of incorporation provide otherwise, amendments to the articles of incorporation must be initiated by the board of directors. The board of directors may condition an amendment's adoption on receipt of a higher percentage of affirmative votes of the members or another basis.

(c) If a board of directors seeks to have an amendment approved by the members at a membership meeting, the corporation shall give notice to the corporation's members of the proposed membership meeting in writing in accordance with IC 23-17-10-5. The notice must do the following:

- (1) State that the purpose of the meeting is to consider the proposed amendment.
- (2) Contain or be accompanied by a copy or summary of the amendment.

(d) If a board of directors seeks to have an amendment approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the amendment.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.121.

IC 23-17-17-6

Public benefit, mutual benefit, or religious corporation; vote by members of class

Sec. 6. (a) The members of a class in a public benefit corporation may vote as a separate voting group on a proposed amendment to the articles of incorporation if the amendment would change the rights of the class as to voting in a manner different than the amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation may vote as a separate voting group on a proposed amendment to the articles of incorporation if the amendment would do any of the following:

- (1) Affect the rights, privileges, preferences, restrictions, or conditions of the class as to voting, dissolution, redemption, or transfer of memberships in a manner different than the

amendment would affect another class.

(2) Change the rights, privileges, preferences, restrictions, or conditions of the class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(3) Increase or decrease the number of memberships authorized for the class.

(4) Increase the number of memberships authorized for another class.

(5) Effect an exchange, a reclassification, or the termination of the memberships of the class.

(6) Authorize a new class of memberships.

(c) The members of a class of a religious corporation may vote as a separate voting group on a proposed amendment to the articles of incorporation only if a class vote is provided for in articles of incorporation or bylaws.

(d) If a class is to be divided into two (2) or more classes as a result of an amendment to the articles of incorporation of a public benefit or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

(e) Except as provided in articles of incorporation or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of incorporation of a corporation, the amendment must be approved by the members of the class by a majority of the votes cast by the class.

(f) A class of members of a public benefit or mutual benefit corporation may have the voting rights granted by this section although articles of incorporation and bylaws provide that the class may not vote on the proposed amendment.

As added by P.L.179-1991, SEC.1.

IC 23-17-17-7

Delivery to secretary of state of articles of amendment; amendment changing corporate name

Sec. 7. (a) A corporation amending the corporation's articles of incorporation must deliver to the secretary of state articles of amendment setting forth the following:

(1) The name of the corporation.

(2) The date of the corporation's incorporation.

(3) The text of each amendment adopted.

(4) The date of each amendment's adoption.

(5) If approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators.

(6) If approval by members was required, the following:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment.

(B) Either:

- (i) the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment; or
- (ii) the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class.

(7) If approval of the amendment was by a person other than the members, a statement under section 1 of this chapter that the approval was obtained.

(b) If a corporation amends the corporation's articles of incorporation to change the corporation's corporate name, the corporation may, after the amendment has become effective, file:

- (1) for record with the county recorder of each county in Indiana in which the corporation has real property; and
- (2) at the time the amendment becomes effective;

a file-stamped copy of the articles of amendment. The validity of a change in name is not affected by a corporation's failure to record the articles of amendment.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.122.

IC 23-17-17-8

Restatement of articles of incorporation; amendment of articles included in restatement; approval

Sec. 8. (a) A corporation's board of directors may restate the corporation's articles of incorporation with or without approval by members or another person.

(b) A restatement may include amendments to the articles of incorporation. If the restatement includes an amendment requiring approval by the members or another person, the amendment must be adopted under section 5 of this chapter.

(c) If a restatement includes an amendment requiring approval by members, the board of directors must submit the restatement to the members for approval.

(d) If a board of directors seeks to have a restatement approved by the members at a membership meeting, the corporation shall notify each of the corporation's members of the proposed membership meeting in writing under IC 23-17-10-5. The notice must do the following:

- (1) State that the purpose of the meeting is to consider the proposed restatement.
- (2) Contain or be accompanied by a copy or summary of the restatement that identifies amendments or other changes the restatement would make in the articles of incorporation.

(e) If a board of directors seeks to have a restatement approved by the members by written ballot or written consent, the material soliciting the approval must contain or be accompanied by a copy or summary of the restatement that identifies amendments or other

changes the restatement would make in the articles of incorporation.

(f) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles of incorporation under section 5 of this chapter.

(g) If a restatement includes an amendment requiring approval under section 1 of this chapter, the board of directors must submit the restatement for approval.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.123.

IC 23-17-17-9

Articles of restatement; delivery to secretary of state; statements required to be included; effect of restated articles; certification by secretary of state

Sec. 9. (a) A corporation restating the corporation's articles of incorporation shall deliver to the secretary of state articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth the following:

(1) Whether the restatement contains an amendment to the articles of incorporation requiring approval by the members or another person other than the board of directors and, if the restatement does not, that the board of directors adopted the restatement.

(2) If the restatement contains an amendment to the articles of incorporation requiring approval by the members, the information required under section 7 of this chapter.

(3) If the restatement contains an amendment to the articles of incorporation requiring approval by a person whose approval is required under section 1 of this chapter, a statement that the approval was obtained.

(b) The restatement of articles of incorporation must include all statements required to be included in original articles of incorporation except that no statement is required to be made with respect to the following:

(1) The names and addresses of the incorporators or the initial or present registered office or agent.

(2) The mailing address of the corporation if an annual report has been filed with the secretary of state.

(c) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the original articles of incorporation.

(d) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required under subsection (a).

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.124.

IC 23-17-17-10

Amendment of articles of incorporation to carry out reorganization plan

Sec. 10. (a) A corporation's articles of incorporation may be amended without approval:

- (1) of the board of directors;
- (2) by the members; or
- (3) as required by section 1 of this chapter;

to carry out a plan of reorganization ordered by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted under IC 23-17-3-2.

(b) An individual designated by a court shall deliver to the secretary of state articles of amendment setting forth the following:

- (1) The name of the corporation.
- (2) The text of each amendment approved by the court.
- (3) The date of the court's order or decree approving the articles of amendment.
- (4) The title of the reorganization proceeding in which the order or decree was entered.
- (5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.125.

IC 23-17-17-11

Rights, claims, proceedings, and limitations not affected by amendment to articles or by change of corporate name

Sec. 11. (a) An amendment to articles of incorporation does not affect the following:

- (1) A proceeding to which the corporation is a party in a cause of action existing against or in favor of the corporation.
- (2) A requirement or limitation imposed upon the corporation or any property held by the corporation by virtue of any trust upon which the property is held by the corporation.
- (3) The existing rights of persons other than members of the corporation.

(b) An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in the corporation's former name.

As added by P.L.179-1991, SEC.1.